

106TH CONGRESS
2D SESSION

S. 3070

To amend title 18, United States Code, to establish criminal penalties for distribution of defective products, to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, and disclosures of discovery information in civil actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2000

Mrs. FEINSTEIN (for herself and Mr. KOHL) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to establish criminal penalties for distribution of defective products, to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, and disclosures of discovery information in civil actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defective Product Pen-
5 alty Act of 2000”.

1 **SEC. 2. DISTRIBUTION OF A DEFECTIVE PRODUCT.**

2 (a) IN GENERAL.—Chapter 11 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 226. Distribution of a defective product**

6 “(a) DEFINITIONS.—In this section:

7 “(1) DEFECTIVE PRODUCT.—The term ‘defec-
8 tive product’ means a product with some flaw in de-
9 sign, manufacture, assembly, or instruction that ren-
10 ders the product dangerous to human life and limb
11 beyond the reasonable and accepted risk associated
12 with such or similar products lacking such a flaw.

13 “(2) SERIOUS BODILY INJURY.—The term ‘seri-
14 ous bodily injury’ means bodily injury that
15 involves—

16 “(A) a substantial risk of death;

17 “(B) extreme physical pain; or

18 “(C) injury to, or impairment of, the func-
19 tion of a bodily member, organ, or mental fac-
20 ulty.

21 “(b) OFFENSE.—

22 “(1) INTRODUCTION.—Whoever knowingly and
23 willfully introduces into interstate commerce a prod-
24 uct known by that person to be a defective
25 product—

1 “(A) that causes the death of any indi-
2 vidual shall be imprisoned for a term of up to
3 15 years, fined under this title, or both; and

4 “(B) that causes serious bodily injury to
5 any individual shall be imprisoned for a term of
6 up to 5 years, fined under this title, or both.

7 “(2) FAILURE TO DISCLOSE.—Any person who
8 has authority to introduce a product into interstate
9 commerce or withdraw or recall a product from
10 interstate commerce, or who has corporate responsi-
11 bility for the product, and who knows that the prod-
12 uct in interstate commerce is a defective product
13 and intentionally fails to disclose the existence of the
14 defect to the appropriate regulatory agency, shall—

15 “(A) if the defective product, after the dis-
16 covery and failure to disclose, causes the death
17 of any individual, be imprisoned for a term of
18 up to 15 years, fined under this title, or both;
19 and

20 “(B) if the defective product, after the dis-
21 covery and failure to disclose, causes serious
22 bodily injury to any individual, be imprisoned
23 for a term of up to 5 years, fined under this
24 title, or both.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-
 2 ysis for chapter 11 of title 18, United States Code, is
 3 amended by adding at the end the following:

“226. Distribution of a defective product.”.

4 **SEC. 3. PROTECTIVE ORDERS AND SEALING OF CASES AND**
 5 **SETTLEMENTS RELATING TO PUBLIC**
 6 **HEALTH OR SAFETY.**

7 (a) SHORT TITLE.—This section may be cited as the
 8 “Sunshine in Litigation Act of 2000”.

9 (b) PROTECTIVE ORDERS AND SEALING OF CASES.—
 10 Chapter 111 of title 28, United States Code, is amended
 11 by adding at the end the following:

12 **“§ 1660. Protective orders and sealing of cases and**
 13 **settlements relating to public health or**
 14 **safety**

15 “(a) IN GENERAL.—A court shall enter an order
 16 under rule 26(c) of the Federal Rules of Civil Procedure
 17 restricting the disclosure of information obtained through
 18 discovery, an order approving a settlement agreement that
 19 would restrict the disclosure of such information, or an
 20 order restricting access to court records in a civil case,
 21 only after making particularized findings of fact that—

22 “(1) the order would not restrict the disclosure
 23 of information that is relevant to the protection of
 24 public health or safety; or

1 “(2)(A) the public interest in disclosure of po-
2 tential health or safety hazards is clearly outweighed
3 by a specific and substantial interest in maintaining
4 the confidentiality of the information or records; and

5 “(B) the protection from disclosure provided by
6 the order is no broader than necessary to protect the
7 interest in maintaining confidentiality.

8 “(b) PERIOD OF EFFECTIVENESS.—No order under
9 subsection (a) (other than an order approving a settlement
10 agreement) shall continue in effect after the entry of final
11 judgment unless, at or after entry of the order, the court
12 makes a separate particularized finding of fact that the
13 requirements of paragraph (1) or (2) of subsection (a)
14 have been met.

15 “(c) BURDEN OF PROOF.—The party that is the pro-
16 ponent for the entry of an order, as provided under this
17 section, shall have the burden of proof in obtaining the
18 order.

19 “(d) NO APPROVAL OR ENFORCEMENT OF AGREE-
20 MENT TO RESTRICT DISCLOSURE.—

21 “(1) IN GENERAL.—No court of the United
22 States may approve or enforce any provision of an
23 agreement between or among parties to a civil ac-
24 tion, or approve or enforce an order subject to sub-
25 section (a), that prohibits or otherwise restricts a

1 party from disclosing any information relevant to the
 2 civil action to any Federal or State agency with au-
 3 thority to enforce laws regulating an activity relating
 4 to such information.

5 “(2) CONFIDENTIALITY.—Any information de-
 6 scribed in paragraph (1) that is disclosed to a Fed-
 7 eral or State agency shall be confidential to the ex-
 8 tent provided by law.”.

9 (c) CONFORMING AMENDMENT.—The table of sec-
 10 tions for chapter 111 of title 28, United States Code, is
 11 amended by adding after the item relating to section 1659
 12 the following:

“1660. Protective orders and sealing of cases and settlements relating to public
 health or safety.”.

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section—

15 (1) take effect on the date that is 30 days after
 16 the date of enactment of this Act; and

17 (2) apply only to orders entered in civil actions
 18 or agreements entered into on or after that date.

19 **SEC. 4. MOTOR VEHICLE SAFETY STANDARDS AND COMPLI-**
 20 **ANCE.**

21 (a) REQUIREMENT OF TESTING BEFORE CERTIFI-
 22 CATION OF COMPLIANCE.—Section 30115 of title 49,
 23 United States Code, is amended in the first sentence by

1 striking “A manufacturer” and inserting “After con-
 2 ducting appropriate testing, a manufacturer”.

3 (b) NOTIFICATION OF DEFECTS AND NONCOMPLI-
 4 ANCE.—Section 30118 of title 49, United States Code, is
 5 amended—

6 (1) in subsections (a), (b)(1), and (c), by insert-
 7 ing “, original equipment,” before “or replacement
 8 equipment” each place it appears; and

9 (2) in subsection (c)—

10 (A) by redesignating paragraphs (1) and
 11 (2) as subparagraphs (A) and (B), respectively,
 12 and indenting appropriately;

13 (B) by striking “A manufacturer” and in-
 14 serting the following:

15 “(1) ACTUAL DEFECTS OR NONCOMPLIANCE.—
 16 A manufacturer”; and

17 (C) by adding at the end the following:

18 “(2) DUTY TO LEARN OF POTENTIAL DEFECTS
 19 OR NONCOMPLIANCE.—A manufacturer of a motor
 20 vehicle, original equipment, or replacement equip-
 21 ment shall—

22 “(A) review and consider information con-
 23 cerning motor vehicle accidents or incidents in
 24 vehicles or equipment in cases in which there
 25 are serious personal injuries, deaths, or fires,

1 including information received from any foreign
 2 source, to learn whether the vehicle or equip-
 3 ment contains a defect or does not comply with
 4 an applicable motor vehicle safety standard; and
 5 “(B) notify the Secretary if the manufac-
 6 turer has reason to believe that a defect or non-
 7 compliance may exist.”.

8 (c) EXTENSION OF PERIOD DURING WHICH REM-
 9 EDIES FOR DEFECTS AND NONCOMPLIANCE SHALL BE
 10 PROVIDED WITHOUT CHARGE.—Section 30120(g)(1) of
 11 title 49, United States Code, is amended—

12 (1) by striking “8 calendar years” and inserting
 13 “10 calendar years”; and

14 (2) by striking “3 calendar years” and inserting
 15 “5 calendar years”.

16 (d) CIVIL PENALTY.—Section 30165(a) of title 49,
 17 United States Code, is amended—

18 (1) in the first sentence, by striking “\$1,000”
 19 and inserting “\$10,000”; and

20 (2) by striking the last sentence.

21 (e) PROVISION OF COPIES OF ALL COMMUNICATIONS
 22 ABOUT DEFECTS AND NONCOMPLIANCE.—Section
 23 30166(f) of title 49, United States Code, is amended—

1 (1) by inserting “(whether the dealers, owners,
2 or purchasers are located in the United States or in
3 a foreign country)” before “about”; and

4 (2) by inserting “in the United States” before
5 the period at the end.

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